

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 16, 2006

STATE OF TENNESSEE v. WILLIAM PAUL ARROWOOD

Direct Appeal from the Circuit Court for Cocke County
No. 9394 Ben W. Hooper, II, Judge

No. E2005-01532-CCA-R3-CD Filed June 30, 2006

The Defendant was convicted for driving under the influence of an intoxicant ("DUI"), fourth offense, driving after having been declared a habitual motor offender, driving on a revoked license, and violation of the implied consent law. The trial court sentenced the Defendant as a Range I offender to four years in the Department of Correction. On appeal, the Defendant contends that the evidence is insufficient to sustain his DUI conviction. Finding that there exists no reversible error, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Keith E. Haas, Newport, Tennessee, for the appellant, William Paul Arrowood.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Al C. Schmutzer, Jr., District Attorney General; Timothy Arrants and James B. Dunn, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises from a traffic accident involving the Defendant on March 21, 2004, which resulted in his arrest for DUI, fourth offense, and other related charges. At the Defendant's trial on these charges, Derrick Webb, an officer with the Newport Police Department, testified that he is certified to give field sobriety tests. He said that on March 21, 2004, he was called to the scene of an accident in the Wal-Mart parking lot. When he arrived, the Defendant was standing outside of a truck, and there was another man and a woman inside of another vehicle. The officer said that, at first, the Defendant said that he was not driving the truck but that a boy who was with him was driving. The officer asked the Defendant again who was driving, and the Defendant admitted that he had been driving the truck. The officer smelled alcohol and asked the Defendant if he had been drinking, and the Defendant said that he had consumed six beers.

The officer confiscated a six-pack of Bud Light bottles from the Defendant's truck, three of which had been consumed. When the officer asked the Defendant for his driver's license, the Defendant said that he did not have one and produced a Kentucky identification card dated 1992. Officer Webb asked the Defendant to perform field sobriety tests, and the Defendant became "belligerent." The Defendant said that he had not been driving and so there was no need for him to take field sobriety tests. Officer Webb testified that the Defendant refused to take any field sobriety tests. The officer testified the Defendant, and the Defendant refused, to take a Breathalyzer test. Officer Webb said that he presented the Defendant with the implied consent form and read from it the portion that stated that Tennessee law requires anyone behind the wheel of a vehicle to submit to alcohol and or blood testing if they are suspected of being under the influence of alcohol. He asked if the Defendant refused to take the test, and the Defendant checked "refused" and signed the form. Officer Webb agreed that he did not see the Defendant driving the truck and did not know that the Defendant had been driving until the Defendant told him so.

On cross-examination, Officer Webb testified that it is not against the law to refuse to submit to a field sobriety test, and the Defendant did nothing wrong by so refusing. The officer agreed that, when he arrived at the accident scene, the Defendant was outside his car, and he had a young man with him, whom he indicated was his son. The officer said that the Defendant's son said that he did not have a driver's license because he was not old enough to drive. The officer agreed that the Defendant's son could have been driving the truck at the time of the accident despite the fact that he did not have a driver's license. Officer Webb testified that the Defendant denied having driven the truck and refused to take a Breathalyzer test.

On redirect-examination, the officer testified that he suspected the Defendant of DUI because the Defendant was a little unsteady on his feet and could not hold his balance correctly, and the Defendant smelled of alcohol and had slurred speech. On recross-examination, Officer Webb agreed that there could be explanations other than the influence of alcohol that could explain the Defendant's behavior.

Based upon this evidence, the jury found the Defendant guilty of DUI and of refusing to submit to a test for the purpose of determining the drug or alcohol content of his blood.

The Defendant stipulated that this was his fourth, or greater, DUI offense. The State then presented proof as to whether the Defendant drove illegally after being declared a habitual motor vehicle offender. The State entered a certified copy of the Defendant's driving record, including a certified copy of a DUI conviction in February of 1992, a certified copy of a DUI conviction in January of 2000, and a certified copy of a DUI conviction in May of 2001. The State then entered an order declaring the Defendant a habitual motor vehicle offender. Based upon this evidence the jury found the Defendant guilty of DUI, fourth offense or greater, of driving in violation of the order declaring him a habitual motor vehicle offender, driving on a revoked or suspended license, and refusing to submit to an alcohol test. The trial court merged the conviction for driving on a revoked or suspended license with the conviction for driving in violation of the order declaring him a habitual

motor vehicle offender.

II. Analysis

On appeal, the Defendant contends that the evidence is insufficient to sustain his conviction for DUI, fourth offense, because the only evidence that the Defendant was driving was his own admission to the police officer that he later denied. The Defendant asserts that his statement or confession standing alone is insufficient to convict him. When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering "the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); see also Tenn. R. App. P. 13(e); State v. Goodwin, 143 S.W.3d 771, 775 (Tenn. 2004). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Pendergrass, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. State v. Buggs, 995 S.W.2d 102, 105 (Tenn. 1999); Liakas v. State, 286 S.W.2d 856, 859 (Tenn. 1956). Questions concerning the credibility of the witnesses, the weight and value of the evidence, and all factual issues raised by the evidence are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. Goodwin, 143 S.W.3d at 775. Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. See State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000).

Under Tennessee law, to support a conviction for DUI, the State is required to prove, beyond a reasonable doubt, that the Defendant was driving or "in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys or while on the premises of any shopping center, . . . while . . . [u]nder the influence of any intoxicant" Tenn. Code Ann. § 55-10-401(a)(1) (2004). A criminal offense may be established exclusively by circumstantial evidence. State v. Raines, 882 S.W.2d 376, 380 (Tenn. Crim. App. 1994) (citing State v. Hailey, 658 S.W.2d 547, 552 (Tenn. Crim. App. 1983)). However, before an accused can be convicted of a criminal offense based on circumstantial evidence alone, the facts and circumstances "'must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant" Id. (quoting State v. Crawford, 470 S.W.2d 610, 612 (Tenn. 1971)). "'In other words, a web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt.'" Id. (quoting Crawford, 470 S.W.2d at 613). We note that this Court has often found that an arresting officer's testimony alone is sufficient to support

a defendant's conviction for DUI. See, e.g., State v. Vasser, 870 S.W.2d 543, 544 (Tenn. Crim. App. 1993).

In the case under submission, the Defendant contends that the State failed to prove that he was driving or in physical control of his motor vehicle. In State v. Lawrence, 849 S.W.2d 761 (Tenn. 1993), the Tennessee Supreme Court adopted a totality of the circumstances test for purposes of determining whether a person was in physical control of a motor vehicle or driving a motor vehicle. Id. at 765; see State v. Butler, 108 S.W.3d 845, 850 (Tenn. 2003). The Court noted that such an inquiry is highly factual and that all circumstances should be taken into consideration by the trier of fact when determining whether the defendant actually drove the vehicle or was in physical control of the vehicle in a particular case. Lawrence, 849 S.W.2d at 765. The Court stated that relevant factors include:

[T]he location of the defendant in relation to the vehicle, the whereabouts of the ignition key, whether the motor was running, the defendant's ability, but for his intoxication, to direct the use or non-use of the vehicle, or the extent to which the vehicle itself is capable of being operated or moved under its own power or otherwise.

Id. at 765.

In the case before us, the Defendant was at the scene where his truck had been involved in an accident. The officer testified that the Defendant admitted that he was driving the truck and that he had consumed six beers. The officer confiscated a six-pack of Bud Light bottles from the Defendant's truck, three of which had been consumed. The Defendant was a little unsteady on his feet and could not hold his balance, he smelled of alcohol, and had slurred speech. The Defendant refused to perform field sobriety tests, becoming "belligerent" when asked to do so. Additionally, the Defendant refused a Breathalyzer test, and he signed an implied consent form that was read and explained to him. While the Defendant also denied that he drove the truck and indicated that his unlicensed minor son was driving, the jury did not accredit this testimony. As mentioned above, it is not the role of the appellate court to make credibility determinations, and we may not replace the jury's inferences with those of our own. Accordingly, the evidence was sufficient, considering the totality of the circumstances, to prove that the Defendant was driving or in physical control of his motor vehicle. We conclude that this evidence is sufficient for a rational trier of fact to find the essential elements of driving under the influence beyond a reasonable doubt, and the Defendant is not entitled to relief on this issue.

III. Conclusion

In accordance with the foregoing authorities and reasoning, the judgments of the trial court are affirmed.

ROBERT W. WEDEMEYER, JUDGE